

**United States District Court
for the
DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Tracy Bentley, individually and as Trustee
for North Dakota Workforce Safety &
Insurance,

Plaintiff,

vs.

Tervita, LLC,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, Tracy Bentley, individually and as Trustee for North Dakota Workforce Safety & Insurance, for his Complaint against Defendant, states and alleges as follows:

JURISDICTION & VENUE

1. Plaintiff Tracy Bentley is an Arizona resident residing at 8643 East University Drive, Mesa, Arizona 85207.
2. Defendant Tervita, Inc. is a Louisiana corporation with its principal place of business in Houston, Texas. Its registered agent is Corporation Service Company and its registered address is 316 North Fifth Street, PO Box 1695, Bismarck, North Dakota 58502-1695.

3. Plaintiff brings his complaint under federal diversity jurisdiction, pursuant to 28 U.S.C. § 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

4. Venue is appropriate in the Northwestern Division of the District of North Dakota because the events giving rise to this action occurred in, and Defendant does business in, the District.

GENERAL ALLEGATIONS

5. On August 10, 2013, Tracy Bentley, employed as a driver for Warren Transport, Inc., had driven a tractor-trailer carrying fly ash to a Precision 561 rig site near Killdeer, North Dakota. He was standing on the back of the open flat-bed trailer hooking bags of fly ash for a loader operator who was an employee of Tervita, LLC. Suddenly and without warning, the loader operator maneuvered the front end of the loader directly towards where Tracy Bentley was standing. To avoid being struck, Tracy Bentley had to step out of the way. In doing so, Mr. Bentley unfortunately stepped off the edge of the trailer, falling to the ground and striking his head, neck, and back, and causing severe injuries.

6. As a direct and proximate result of the negligence of Tervita's employee, Tracy Bentley sustained a serious and permanent injury to his head, neck, and back, as well as other injuries, including his knee. The incident and resulting injury has caused Mr. Bentley tremendous pain and suffering, discomfort, inconvenience, anxiety, loss of enjoyment of life, and emotional distress. He has incurred significant medical and other incidental expenses. It is expected that his injury and damages are permanent and will

persist into the future, and that ongoing treatment will be required. Mr. Bentley has suffered loss of earnings and earning capacity. He continues to incur medical and other expenses as a consequence of this incident.

8. Because Tracy Bentley was working at the time of his injury, some of his medical care and wage loss has been paid by Workforce Safety & Insurance (WSI). As of August 15, 2014, WSI has paid \$345,465.08 in benefits related to this injury. Pursuant to N.D.C.C. § 65-01-09, Mr. Bentley brings this action in his own right and as trustee for WSI's subrogation interest.

COUNT I NEGLIGENCE

9. Tervita's employee had a duty to maintain control of his equipment, and to remain aware of his surroundings and the safety of others. Through negligence, he breached that duty, directly resulting in all of the injuries and damages suffered by Plaintiff.

10. Because Tervita's employee was acting in the course and scope of his employment at the time of this incident, Tervita, LLC is vicariously liable for his negligence.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff Tracy Bentley, individually and as Trustee for WSI, seeks judgment against Defendant in a reasonable sum more than Seventy-Five Thousand Dollars (\$75,000) for economic and noneconomic damages in an amount to be determined by the jury, and for all other relief as the Court deems just.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

Dated: 8.22.14

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